IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 742 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VALJI JUNHA RATHOD THRO' VASRAM PALABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 742 of 2000

MR H.S.MULIA for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

RULE SERVED for Respondent No. 2,4

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/09/2001

ORAL JUDGEMENT

In this petition filed under Article-226 of the

Constitution of India, petitioner has challenged the order dated April 3, 2000 (Annexure-'B' to the petition) passed by the externing authority i.e. Sub-Divisional Magistrate, Viramgam by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad Rural, Ahmedabad City, Mehsana, Surendra Nagar and Gandhinagar and also the order dated July 4, 2000 (Annexure-C to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show-cause notice dated February 22, 2000 under Section 56 of the Bombay Police Act was issued to the petitioner, wherein, several allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, three cases under the Prohibition Act are registered in Mandal police station against him. Therefore, by issuing a show-cause notice the petitioner was called upon to show -cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show-cause notice. The externing Authority, after considering the reply and order, passed the impugned order of externment dated April 3, 2000 in exercise of the powers conferred under Section 56 of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated July 4, 2000 which has given rise to the present petition.

5. Mr.H.S.Mulia, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. There is a delay in passing the impugned order. Besides this, he has also raised a contention that the petitioner belongs to Ahmedabad Rural District and he is

externed not only from Ahmedabad Rural District but also from Ahmedabad City, Mehsana, Surendra Nagar and Gandhinagar. He also contended that the alleged so-called activities which are narrated in the show-cause notice are confined to Ahmedabad city only and the externing Authority has not mentioned anything about the so called illegal activities of the petitioner in the contiguous four districts. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vices of non-application of mind, and is, therefore, liable to be quashed and set aside.

6. In support of the aforesaid contention, he placed reliance upon the case of BALVANTSINGH @ NANIO KALYANSINGH RAJPUT LALBAGH, VADODARA VS. DEPUTY COMMISSIONER OF POLICE, VADODARA & OTHERS - 1999 (1) GLH 207.

7. Mr.K.T.Dave, learned APP opposed the petition and contended that the petitioner is a strong headed person and his activities are detrimental to the society at large. He is involved in three criminal cases out of which two are pending at investigation stage. He further contended that Section 56 of the Act empowers the externing authority to extern the person not only from the area from which the person is operating, but to extern him outside the area of his jurisdiction and also of the District and contiguous Districts and therefore, looking to the nefarious activities of the petitioner he has been rightly externed by the externing authority not only from Ahmedabad Rural but also from four contiguous districts. To buttress the aforesaid submissions he relied upon the judgement of the Division Bench of this Court in the case of BABAKHAN ALIAS NARSINGH GULAMMOHAMAD PATHAN V. STATE OF GUJARAT-1987 GLH 176. He, therefore, urged to dismiss the petition.

8. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority, as well as the order passed by the appellate Authority and other papers annexed to the petition and the judgement cited at the bar.

9. The Division Bench of this Court in the case of BABAKHAN ALIAS NARSINGH GULAMMOHAMAD PATHAN V. STATE OF GUJARAT - 1987 GLH 176 has held that Section 56 of the Bombay Police Act empowers the externing authority to extern the person not only from the area from which the

person is operating, but to extern him outside the area of his jurisdiction and also of the District and contiguous Districts. It is not necessary that his nefarious activities should be at these places or Districts. The reason for externing a person from a particular locality is to disable and prevent such a person from carrying on his nefarious activities and for that purpose, he is required to be externed to such a distance so as to effectively prevent him from indulging in such activities. The externing authority has observed that if the petitioner is not externed from the nearby Districts, there is a clear possibility that he may carry on such activities from the nearby Districts through his accomplices and agents. Such power to extern from such area and other contiguous area is clearly conferred by S. 56 of the Bombay Police Act.

10. In view of the statutory provisions contained under Section 56 of the Act and the judgement in the case of BABAKHAN (supra), it is true that the externing Authority has power under sec.56 of the Act to remove or extern a person not only from the district within which the externing Authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in sec.56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

11. Coming to the facts of the present case, there is no matter of doubt that the externing Authority has not mentioned either in his show-cause notice or in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned four districts in addition to Ahmedabad Rural. Therefore, it can be said that at the time of passing of the impugned order of externment the externing Authority has not mentioned as to why the petitioner should be externed from other four districts in addition to Ahmedabad Rural. On this sole ground, the order of the externing Authority externing the petitioner and that of the appellate Authority confirming the order of externment are rendered invalid and illegal and deserves to be quashed and set aside.

12. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'B' and 'C' to the petition are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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